



**One Riverfront Plaza**

1037 Raymond Blvd, Suite 600  
Newark, NJ 07102

T: 973.757.1100  
F: 973.757.1090

**WALSH.LAW**

Marc D. Haefner  
Direct Dial: (973) 757-1013  
mhaefner@walsh.law

April 22, 2019

**VIA ECF AND FEDERAL EXPRESS**

Honorable Peter G. Sheridan, U.S.D.J.  
United States District Court for the District of New Jersey  
Clarkson S. Fisher Bldg. & U.S. Courthouse  
402 East State  
Trenton, New Jersey 08608

**Re: Kars 4 Kids Inc. v. America Can!,  
Civil Action No. 14-cv-7770 (PGS)(LHG)**

Dear Judge Sheridan:

This firm, along with Orrick, Herrington & Sutcliffe LLP, represents Plaintiff Kars 4 Kids Inc. ("Kars 4 Kids") in the above-referenced matter. Pursuant to Your Honor's Order, we anticipate a May 2, 2019 hearing to discuss the voir dire questions, the jury instructions, and the jury verdict form.

We write now to request leave to file a short brief on a limited issue: specifically, Defendant/Counterclaim Plaintiff America Can now seeks to have the jury decide whether its mark WRITE OFF THE CAR, NOT THE KID, has been infringed by Kars 4 Kids. America Can's claim of infringement of this mark, however, was not pled either its New Jersey counterclaim, or its Texas complaint. Because of this, the issue of possible infringement was not a subject of discovery by Kars 4 Kids. While this issue has now been crystalized by America Can's jury

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instructions and jury verdict sheet, it is not, properly understood, a jury instruction dispute. That is, it is not about word choice or the proper ordering of the instructions.

We asked counsel for America Can whether they would consent to briefing this issue on the schedule set out below and we were told that America Can believes all comments regarding the jury charges and verdict sheet should be taken up orally at the May 2, 2019 conference. That is, they would not consent to briefing on this issue.

We remain of the belief, however, that this is a dispute about what claims are in the case and what claims are not, as opposed to a matter properly understood as a charging decision. Thus, we believe that a short brief on this issue of no more than 10 double-spaced pages filed by Kars 4 Kids on April 25, 2019 with an opposition, if any, filed by America Can on April 30, 2019 would bring this matter to a head in a fashion to permit Your Honor to meaningfully address it at Your Honor's convenience. If Your Honor agrees to the fact of briefing and to Kars 4 Kids proposed schedule, we would ask Your Honor to "so order" this letter.

We thank the Court for its continued attention to this matter. Should Your Honor or Your Honor's staff have any questions or need anything further, we are available.

Respectfully submitted,



Marc D. Haefner

cc: All Counsel of Record (*via ECF and email*)